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Supreme Court Of The United States

OCTOBER TERM, 1972

No. 72-607

MRS. B. J. GAILLOT, JR. ..... Petitioner

vs.

UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE ..... Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JOHN NORMAN WARDLOCK
El Dorado Highway
Route #2, Box 178
Camden, Arkansas 71701

Attorney for Petitioner

TRIVATHAN PRINTING COMPANY, NEWPORT, ARKANSAS

INDEX

	Page
CITATIONS TO OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISIONS, STATUTES AND FEDERAL RULES AND REGULATIONS INVOLVED	2
QUESTIONS PRESENTED	2
STATEMENT OF FACTS	3
REASONS FOR GRANTING THE WRIT	6
QUESTION ONE	6
QUESTION TWO	11
QUESTION THREE	16
CONCLUSION	16
APPENDIX A	19
APPENDIX B	21
APPENDIX C	22
APPENDIX D	23
APPENDIX E	25
EXHIBIT: "God's Law"	Separate Cover

CITATIONS

Cases:

Aetna Life Insurance Co. v. Hanworth, 300 U.S. 227 10

Duggins v. Hunt, 323 F. 2nd 746, 748 (10th Cir. 1963) 8

Eccles v. Peoples Bank of Lakewood Village, 1948, 68 S.Ct. 641, 333 U.S. 426, 92 L.Ed. 784 6

Golden v. Zwickler, 1969, 89 S.Ct. 956, 394 U.S. 103, 22 L.Ed. 2nd 113 6

Guardian Life Ins. Co. of America v. Kortz, 151 F. 2nd 582 (10th Cir. 1945) 9

International Longshoremen's and Warehousemen's Union v. Boyd, 1954, 74 S.Ct. 447, 448, 347 U.S. 222, 224, 98 L.Ed. 650 8

Johnston v. Interstate Transit Lines, 163 F. 2nd 125, 128, 172, ALR 1242 (10th Cir. 1947) 9

Maryland Casualty Co. v. Pacific Coal and Oil Co., 312 U.S. 270, 273 (1941) 9

A. L. Mechling Barge Lines, Inc. v. U.S., 1962, 82 S.Ct. 337, 368 U.S. 324, 7 L.Ed. 317 7

Powell v. McCormack, 1969, 89 S.Ct. 1944, 395 U.S. 486, 23 L.Ed. 2nd 491 7

Public Affairs Associates, Inc. v. Rickover, 1962, 82 S.Ct. 580, 369 U.S. 111 7

Shannon v. Sequeechi, 365 F. 2nd 827 (10th Cir. 1966) 9

United Public Workers v. Mitchell, 1946, 67 S.Ct. 556, 330 U.S. 75, 91 L.Ed. 754 6

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No. ————

MRS. B. J. GAILLOT, JR. ..... *Petitioner*

VS.

UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE ..... *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner prays that Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above case on July 27, 1972.

CITATION TO OPINION BELOW

Opinion of the Circuit Court of Appeals printed in Appendix (A)

JURISDICTION

The jurisdiction of this Court is invoked under 28 USC Paragraph 1254 (1).

CONSTITUTIONAL PROVISIONS, STATUTES AND FEDERAL RULES AND REGULATIONS AND STATE STATUTES INVOLVED

The pertinent Amendments of the U.S. Constitution —

FIRST AMENDMENT

TENTH AMENDMENT

FOURTEENTH AMENDMENT

The pertinent portions of the United States Code to wit:

42 U.S.C.A., Par. 2000d et seq. and 45 C.F.R. Par. 80.1. Louisiana State Statute 40:1296.

QUESTIONS PRESENTED

I

IS PETITIONER ENTITLED TO A DECLARATORY JUDGMENT BASED UPON HER RELIGIOUS AND PERSONAL FREEDOM TO DETERMINE WHETHER OR NOT THE UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE HAS AUTHORITY TO REQUIRE THAT PARTICIPATING HOSPITALS IN LOUISIANA *NOT LABEL* BLOOD OBTAINED FOR BLOOD TRANSFUSIONS *BY RACE*?

II

DOES THE LOSS OF PETITIONER'S RIGHTS UPON ENTERING INTO A PARTICIPATING HOSPITAL IN LOUISIANA TO HAVE THE INVIOLABILITY OF HER BODY REGARDING BLOOD BY RACE TO BE INJECTED INTO HER VEINS CONSTITUTE A REAL AND IMMEDIATE THREAT TO HER PERSON AND RELIGIOUS TRUTHS AS TO CONSTITUTE A JUSTICIABLE CONTROVERSY?

III

DO OPERATORS OF BLOOD BANKS AND HOSPITALS IN LOUISIANA HAVE A RIGHT NOT TO LABEL BLOOD BY RACE IN VIOLATION OF STATE STATUTES IN THE ABSENCE OF FEDERAL LAWS TO THE CONTRARY?

STATEMENTS OF FACTS

Upon learning in August, 1969 that the United States Department of Health, Education and Welfare had required the hospitals in New Orleans receiving any Federal aid by participating in its programs were required *not* to label blood by race, the petitioner, Mrs. B. J. Gaillot, Jr. knew immediately that this was violating her personal civil rights and religious freedom. Analyzing the dangers and personal violations in this dictatorial directive, she decided that she would attempt to do something about it.

On June 4, 1970, Petitioner filed in *proper person* a complaint in the District Court for the Eastern District of Louisiana of New Orleans Division asking for a Declaratory Judgment against the United States Department of Health, Education and Welfare requesting the Court to invalidate its directive requiring that blood for use in transfusions *not* be labeled by *race.*

Petitioner contended that the United States government had set up double standards with regard to *race* by requiring citizens of the United States to identify themselves or label race in answering questions for the Census and then H.E.W. requiring citizens to have injected into their veins, blood not *labeled* by *race.* She contends that the double standard from two federal agencies forced her to

obey the law and to break the law at the same time relevant to labeling *race*.

On June 11, 1971, the District Court dismissed petitioner's complaint on the grounds that she failed to demonstrate the basis for the court's jurisdiction, and that petitioner failed to state a claim upon which relief could be granted as she had failed to show a controversy qualifying as justiciable in character.

The court went on to say she had not shown that she had sustained or in the future would sustain any direct personal injury as a result of the Department of Health, Education and Welfare requirement that blood *not* be *labeled* by *race*. The Court determined that her allegations did no more than allege vague and indefinite terms that she might suffer an injury in the future.

The petitioner claimed to the court that her jurisdiction was based on the fact that since two Federal Agencies were involved, no state court had jurisdiction. The only court who could hear her complaint was the Federal Court of which she was there in *proper person* pleading for her Civil Rights and Religious Freedom.

Petitioner further contended that the immediate existing dangers resulting from the directive of H.E.W., that her body would be subjected to this unconstitutional violation of her civil rights and religious freedom was ever present which rendered her to be placed constantly in a state of fear, jeopardy, and mental anguish. Further that if she had been given against her will blood of another *race* injected in her veins, it would have endangered her Salvation before God.

The Court declared that petitioner's injury had to be shared by all people in common. Petitioner contended, the

Court failed to realize that laws are not made for groups of peoples but for the individual.

On September 1, 1971, petitioner filed a Notice of Appeal to the United States Court of Appeals for the Fifth Circuit. Petitioner in proper person again asserted her right for jurisdiction on the basis that federal agencies, laws, regulations or rules cannot be tried in Local or State Courts.

In addition Petitioner prayed that the Court of Appeals hear her case on the basis that it involved grave constitutional considerations and would set a much needed precedent to protect her Civil Rights and Religious Freedom.

Petitioner further contended as a basis for her appeal that if the lower Court's ruling was allowed to stand and not come to trial on its merit, no citizen is safe in his religious beliefs and personal liberty. H.E.W. directive would then be permitted to supersede the United States Constitution.

Petitioner was notified that the Court of Appeals had taken her case off the Oral Argument and placed it on the Summary Calendar. Immediately she filed a Motion requesting they send to her copies of the law or laws which constitutes their right to take her case off the Oral Argument Calendar. She asked reasonable time to do research on the question and she wanted to have them consider her reply before justice could be done in her case. Her request was ignored by the Appellate Court.

On the 27th of July, 1972, the Appellate Court affirmed the ruling of the lower Court. In its ruling, the Court stated that Petitioner had failed to establish a question of potential constitutional significance in that her complaint

did not amount to a case of controversy within the meaning of Article 3 of the United States Constitution.

Further that her set of facts did not necessitate a judicial opinion "advising what the law would be upon a hypothetical state of facts." That she had not established her interest in the outcome of the litigation by proving an actual or immediate threatened interference with her legal rights but that the relief she desired was upon some speculative future adversity that may never materialize.

The Appellate Court did not decide the "double standard by the Federal Government" and the issue of her Religious Freedom, and the violation thereof by the directive of the United States Department of Health, Education and Welfare.

REASONS FOR GRANTING THE WRIT

(QUESTION ONE)

Petitioner is aware that the United States Supreme Court has indicated a recognizable reluctance to have important issues of public law resolved by Declaratory Judgments.

(Political activities of Government Employees) *United Public Workers v. Mitchell*, 1946, 67 S.Ct. 556, 330 U.S. 75, 91 L.Ed. 754;

(Conditions on Admission of a State Bank to the Federal Reserve System) *Eccles v. Peoples Bank of Lakewood Village*, 1948, 68 S.Ct. 641, 333 U.S. 426, 92 L.Ed. 784;

(Handbills for a Forthcoming Election) *Golden v. Zwickler*, 1969, 89 S.Ct. 956, 394 U.S. 103, 22 L.Ed. 2nd 113;

(Cong. Adam Clayton Powell files claim for back pay after seating, did not involve a political question) *Powell v. McCormack*, 1969, 89 S.Ct. 1944, 395 U.S. 486, 23 L.Ed. 2nd 491.

And that the Declaratory Act is not a grant of jurisdiction to the Federal Courts. It does however, make available as an additional remedy in cases of which they have jurisdiction by virtue of Federal questions such as the questions herein presented by the Petitioner, and this is regardless of whether the pleadings raise them.

Page 60 The Law of Federal Courts by Charles Allen Wright.

Also it has been decided that a Declaratory judgment should not be used to pre-empt, or prejudge issues that are committed for initial decision to an administrative body; also the Supreme Court has warned against the grant of declaratory judgment involving an important question of public law on the basis of sparse record.

(Need for a decision on the validity of a temporary order to aid a suit for damages which might be brought) *A. L. Mechling Barge Lines, Inc. v. U.S.*, 1962, 82 S.Ct. 337, 368 U.S. 324, 7 L.Ed. 317;

(Action under Declaratory Judgment for a determination of the rights of Vice Admiral Rickover to intellectual property arising out of public employment. The Declaratory Judgment Act gave Federal Courts competence to make a declaration of rights. It did not impose a duty to do so) *Public Affairs Associates, Inc. v. Rickover*, 1962, 82 S.Ct. 580, 369 U.S. 111.

Also the Court has said that the scope and constitutionality of legislation must not be decided "in advance

of its immediate adverse effect in the context of a concrete case."

(Aliens returning from Alaska were treated as entering the U.S. for the first time by Immigration officials) *International Longshoremen's and Warehousemen's Union v. Boyd*, 1954, 74 S.Ct. 447, 448, 347 U.S. 222, 224, 98 L.Ed. 650.

However the pertinent provisions of 28 U.S.C. Section 1343 are as follows:

"(3) *To redress the deprivation, under color of any State law statute, ordinance, regulation, custom or usage by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.*"

Also an actual controversy that is within the Court's jurisdiction must be shown as provided in 28 U.S.C. Section 2201 which read in pertinent part as follows:

"*In a case of actual controversy within its jurisdiction, • • • any Court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. And such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.*"

It was stated in *Duggins v. Hunt*, 323 F. 2nd 746, 748 (10th Cir. 1963) as pointed out in Appellee's brief to US Court of Appeals for the 5th Circuit that the general purpose of the Declaratory Judgment Act is to provide an immediate forum for adjudication of rights and obligations

where an actual controversy that exists may be settled in its entirety with expediency and economy. The Court is granted discretion whether to entertain the action for declaratory relief, and the judgment of the trial court is to be reviewed by the appellate court only to consider whether there has been a clear abuse of discretion.

Guardian Life Ins. Co. of America v. Kortz, 151 F. 2nd 582 (10th Cir. 1945); *Shannon v. Sequeechi*, 365 F. 2nd 827 (10th Cir. 1966).

"The essential distinction between a declaratory judgment action and the usual action is that in the former no actual wrong need have been committed or loss have occurred in order to sustain the action, but there must be no uncertainty that the loss will occur or that the asserted right will be invaded. If this is clearly established, one may proceed under the Declaratory Judgment Act and need not await the actual happening of the event complained of."

Johnston v. Interstate Transit Lines, 163 F. 2nd 125, 128, 172, ALR 1242 (10th Cir. 1947).

The United States Constitution in Article 3, Sec. 2 limits exercise of judicial power of the United States to cases and controversies.

What must be determined in each case is whether the facts alleged and all the circumstances show existence of a substantial controversy between the parties of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

Maryland Casualty Co. v. Pacific Coal and Oil Co., 312 U.S. 270, 273 (1941)

"The difference between an abstract question and a

'controversy' contemplated by the Declaratory Judgment Act is necessarily one of decree, and it would be difficult, if it would be possible, to fashion a precise test for determining in every case whether there is such a controversy. Basically, the question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment."

Aetna Life Insurance Co. v. Hanworth, 300 U.S. 227.

Petitioner denies that there is any uncertainty that any harm would ever be sustained by her as a result of the regulation of the Secretary of Health, Education and Welfare prohibiting the designation of *race* on blood stored in blood banks and/or hospitals for immediate use as speculation or anticipation of a future injury requiring the use of blood from a blood bank or donor.

The Petitioner contends that each day that she is to exist under this threat it is an assault upon her person, her religious freedom, and her civil rights protected under the First Amendment of the Constitution. To know that if she is taken to a hospital unconscious or conscious that she would *not* have the right to determine the *race* of donor of the blood if necessary to be injected into her veins is a constant threat to her spiritual and her physical well being.

This the Petitioner contends is a justiciable controversy and that it is distinguished from a difference or dispute of hypothetical or abstract character, and that it is not academic or moot.

It is real and present, and she further contends that the controversy is definite, concrete touching the legal

relationship between herself and the punitive verbal orders of the US Department of Health, Education and Welfare.

That she is entitled to have this Honorable Court decide by way of a Declaratory Judgment that she as a person and in her own religious belief, and protection of her civil rights has a right to determine the *race* of the blood to be injected into her veins which right she *does not* now have due to the aforementioned order and its refusing to permit participating hospitals to label blood preserved for transfusion by *race*.

This brings us to the next question as to whether or not a justiciable controversy is involved.

In regard to the matter of establishing the existence of a controversy the Petitioner desires to address the Court in her own behalf:

QUESTION TWO

A controversy according to Webster's International Unabridged Dictionary of 1937 "A suit in law . . . a prolonged discussion or dispute, as one of a . . . theological character . . ."

The controversy before this court is one of a religious, civil and federal character.

The First Amendment to our U.S. Constitution should be sufficient for this court to admit that I must be guaranteed my religious freedom at all times to obey and worship the "Only Living God", when I deem it absolutely necessary for the salvation of my eternal life with God.

This controversy is most urgent and must be without "abuse of discretion" (brief for the U.S. Court of Appeals p. 5, par. 3).

Discretion according to Webster's as earlier mentioned "liberty or power of acting without other control than one's own judgment". Could this not mean that the discretion of the court would be that the control of religion were left to the power of the court if H.E.W.'s directive and the Civil Rights Act as of 1954 can take away my rights to religious and civil freedom?

If this be so, wouldn't that be an "abuse of discretion" since the First Amendment to our U.S. Constitution guarantees me freedom of religion and I might add "full time" freedom, since part time would be slavery?

Realizing that all judges in America become officially as such by the very oath on the Holy Christian Bible to uphold and defend the same U.S. Constitution that guarantees me freedom of the oldest known and valid religion known to the white man, namely the Christian religion.

"Sociology" which the 1954 Supreme Court used as its foundation (Appellee's Appendix, Court of Appeals p. 23 last par. and p. 24 1st and 2nd par.) for their decision, we find documented that sociology was coined by August Comte "the twice declared mental case" is a theory, science and religion of humanism.

When Congress used sociology they used theory, science and religion of humanism, as the so called law of the land. Indeed this is a major part of the controversy that the court should admit to and give judgment and justice in my behalf, against H.E.W. and the Civil Rights Law from 1954 pertaining to the separation of the races, since Congress cannot make a religion the law of the land. The double standard by the Census Bureau of 1970 and the directive of H.E.W. who used its authority from Title VI of the Civil Rights Act of 1964.

The concluding controversy is taken from the States Item September 7, 1972, "Justice William O. Douglas . . . the more important point Douglas went on, is that 'we're actually hearing and deciding fewer cases now than when we were when I went on the Court' this means more appeals than ever before and being tossed out without full consideration."

Regarding "full consideration" to my writ, remember your Oath of office, the determination for justice by a law abiding non-violent, God obeying, Holy child of God, that comes to you as a free American citizen, seeking relief and justice.

RELIEF

The United States Court of Appeals for the Fifth Circuit stated, that seeking relief I must establish my interest in the outcome of the litigation by demonstrating actual or immediate threatening interference with my legal right rather than some speculative future adversity that may never materialize. (p. 3, par. 1)

It appears that the Court of Appeals doesn't understand that I did cite the relief and established my interest in the outcome of the litigation through demonstration the "actual and immediate threat upon my legal rights". In my brief presented to the Court of Appeals (p. 22)

The actual threat and punitive action between the Census Bureau which demands under the penalty of fine or imprison or both, for refusing to answer all known questions on the Census including the "labeling of race", and the breaking of the directive of H.E.W., by "labeling race" placed me in the position of obeying the law and breaking the law at the same time. I break the law when I

obey the law. This is an "assault" upon my person which should be declared null and void by this Court, if this Court is an American Court of Justice, under our valid, original United States Constitution.

Relief from this Court must grant me from our United States Constitutional Law is to be free immediately from the damages, which harm of pain of mind, heart, body and spirit is upon me from the ungodly evils of H.E.W. and the whole so-called Civil Rights action since 1954.

Let me clarify "assault" according to the "Legal Jargon" as explained in the magazine M X R Vol. 1 August 1971. "Assault — an intentional act of physical force directed at another that creates a reasonable fear of peril, even if no physical contact actually takes place." The outcome of the litigation is demonstrated in the actual and immediate threat interfering with my legal rights is also the "assault" by the President, Vice President, Congress, etc., who participated in the 1964 Civil Rights ruling which is called the law of the land, that made void my civil rights, when they took away my freedom to obey the "Only Living God" who demands the separation of the races for the salvation of my soul and Country. As documented in my book (submitted and accepted in the United States District Court Eastern District of New Orleans, Louisiana proceedings in open court p. 8).

We know that Civil Rights Act is an intentional act of physical force upon the citizen who does not obey that act. Now came another "assault" by the U.S. Department of H.E.W. et. al. which again immediately threatened the loss of my legal right under the valid First Amendment to our U.S. Constitution, and tries to tell me that by their directive that I cannot have the "right" to obey the "Only Living God" by keeping the purity of my blood by *race*

when I might need blood to save my life. If this is the right to life, liberty and the pursuit of happiness, spare me!

A free citizen in a free country is entitled to the inviolability of his body!

March 1, 1970 The Citation, Vol. 20, No. 10 "In an appeal to Oklahoma's highest court to determine whether States disability payments should be made when an employee had refused medical attention because of his religious beliefs . . . . however, the court stated that in spite of this fact "(refusal to take any kind of pills, medication or medicine)" an employee is free to believe and worship as he pleases and to practice his beliefs."

M X R Vol. 1 August, 1971

"The law requires that you must obtain the consent of the patient to the course of treatment, and if that consent is not given, you may be liable in monetary damages even if the treatment is proper, and even where the results are satisfactory . . . a famous opinion by Judge Cardozo in 1914, in the case of Schloendorff v. Society of New York Hospital . . . . The Court said: 'Every human being of adult years and sound mind has a right to determine what shall be done with his own body. . . .' "

The Court surely realizes the money and constant fear upon my body, mind and spirit in seeking for relief and justice in the Courts, pertaining to my religious and civil rights, while the "American Jewish Committee" remained firm in its stand against the religious question on religious freedom and the First Amendment grounds, regarding religion on the 1970 Census (Clarion Herald Vol. 4 No. 29, Sept. 15, 1966.

QUESTION THREE

There does not appear to be a Federal Court Case which upholds any so-called H.E.W. directive to the effect that blood obtained for transfusions can not be labeled by *race*. None was cited by the Government in lower courts.

As it appears now there is *not* in existence a US Department of Health, Education and Welfare Directive requiring that blood not be labeled by *race*.

In the presence of such startling developments it is respectfully requested that if this Court does not render a Declaratory Judgment in favor of Petitioner, that it remand this matter to the proper Court to instruct Blood Banks and Hospitals to obey the laws of the State of Louisiana relative to the labeling of blood by *race*.

A ruling on the Supremacy Clause of the U.S. Constitution is not necessary since it appears that no Federal Statute is involved.

CONCLUSION

Petitioner respectfully requests that this Honorable Court declare the directive of the United States Department of Health, Education and Welfare requiring that participating hospitals *not* label blood obtained for blood transfusions by *race* (IF ONE EXISTS) as exceeding its administrative authority and is unconstitutional in that such directive violates Petitioner's Civil Rights and Religious Freedom.

Respectfully submitted,

JOHN NORMAN WARNOCK
Camden, Arkansas 71701
Attorney for Petitioner

CERTIFICATE

I hereby certify that two copies of the above and foregoing Writ for Petitioner were mailed to Mr. Elliot Lee Richardson, Secretary of the Department of Health, Education and Welfare, 330 Independence Ave. S.W., Washington, D.C. 20201, Mr. Richard Kleindeist, Attorney General of the United States, Constitution Ave. and Tenth St. N.W., Washington, D.C. 20503, Mr. Gerald J. Gallinghouse, United States Attorney, 500 St. Louis St., New Orleans, La. 70130 on this 11th day of October, 1972.

/s/ JOHN NORMAN WARNOCK
Attorney for Petitioner

Appendix

APPENDIX A

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 71-2805
Summary Calendar*

MRS. B. J. GAILLOT, JR.,
Plaintiff-Appellant,

VERSUS

UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE,
Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana

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(July 27, 1972)

Before BROWN, Chief Judge, INGRAHAM and RONEY, Circuit Judges.

PER CURIAM: While perusing the August 13, 1969 edition of the New Orleans *Times-Picayune* Mrs. B. J.

*Rule 18, 5 Cir.; see Isbell Enterprises, Inc. v. Citizens Casualty Company of New York, et al., 5 Cir., 1970, 431 F.2d 409, Part I.

Gaillot, Jr. discovered that the Department of Health, Education and Welfare had adopted a policy of denying Federal financial assistance to State hospitals if they continued to classify blood according to the race of the donor.[1] Acting as her own attorney she then instituted a declaratory judgment action in the District Court, contending that the HEW policy was manifestly inconsistent with the disclosure of racial information required by the United States Bureau of Census and constituted a denial of her rights under the First Amendment because her religious convictions did not permit her to accept a transfusion of blood from a person of another race. The District Court dismissed the complaint. We affirm.

Since Mrs. Gaillot is not a lawyer she was probably unaware when she filed her suit that Federal courts traditionally have declined to decide questions of potentially constitutional significance — or, for that matter, questions of any other sort — unless they arise from a "case or controversy" within the meaning of Article III of the United States Constitution. A "controversy" in this sense involves considerably more than mere abstract philosophical disagreement with the wisdom, propriety or desirability of specific governmental activities, necessitating a judicial opinion "advising what the law would be upon a hypothetical state of facts." *Aetna Life Insurance Co. v. Haworth*, 1937, 300 U.S. 227, 241, 57 S.Ct. 461, ——, 81 L.Ed. 617, 621; *Nashville, Chattanooga & St. Louis Railway v. Wallace*, 1933, 288 U.S. 249, 262, 53 S.Ct. 345, ——, 77 L.Ed. 730, 735; *Byers v. Byers*, 5 Cir., 1958, 254 F.2d 205, 208. As a corollary proposition, a party seeking relief must establish

[1]The Department's authority was derived from Title VI of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000d **et seq.**, and the regulations promulgated under it, 45 C.F.R. § 80.1 **et seq.** (1969).

his interest in the outcome of the litigation by demonstrating actual or immediately threatened interference with his legal rights, rather than some speculative future adversity that may never materialize. *Poe v. Ullman*, 1961, 367 U.S. 497, 504, 81 S.Ct. 1752, ——, 6 L.Ed.2d 989, 996; *International Longshoremen's and Warehousemen's Union v. Boyd*, 1954, 347 U.S. 222, 74 S.Ct. 447, 98 L.Ed. 650.

The purported conflict between the policies of HEW and the Census Bureau has no perceptible impact on Mrs. Gaillot's interests. Essentially her claim is that *if* in the future she should suffer injury or disease requiring a blood transfusion and *if* the only available blood supply is from a State hospital which has elected to comply with the HEW policy (rather than from private sources not subject to the requirements), she *may* be involuntarily subjected to a procedure which *might* offend her religious sensibilities *if* the blood given her comes from a person of a different race. Since claims involving such hypothetical contingencies have never provided a proper foundation for constitutional adjudication, we conclude that the District Court correctly declined "to make existing controversies out of presently academic differences." *American Fidelity & Casualty Co. v. United States Fidelity & Guaranty Co.*, 5 cir., 1962, 305 F.2d 633, 638 (concurring opinion).

AFFIRMED.

APPENDIX B

AMENDMENT I, CONSTITUTION OF THE UNITED STATES

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the

right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT X, CONSTITUTION OF THE UNITED STATES, USCA CONSTITUTION AMENDMENTS VI TO XIV.

The powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States respectively, or to the people.

AMENDMENT XIV, CONSTITUTION OF THE UNITED STATES, USCA CONSTITUTION AMENDMENTS VI TO XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the Laws.

APPENDIX C

STATUTES

42 U.S.C. §1983

CIVIL ACTION FOR DEPRIVATION OF RIGHTS

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured

by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C.A §2000d.

Prohibition against exclusion from participation in, denial of benefits of, and discrimination under Federally assisted programs on ground of race, color, or national origin

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

45 CFR §80.1 *Purpose.*

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall; on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Health, Education, and Welfare.

APPENDIX D

LOUISIANA STATE STATUTE R.S. 40:1296

PART XIII. BLOOD TRANSFUSIONS

§1296.1 *Labeling of blood according to race*

All human blood used or proposed to be used in the state of Louisiana for transfusions of blood shall be labeled

with the word "Caucasian", "Negroid", or "Mongoloid" or some suitable designation so as to clearly indicate the race of the donor of such blood. No human blood not labeled in accordance with the provisions of this Part shall be used for transfusions in the state of Louisiana. Acts 1958, No. 519, §1.

§1296.2 *Informing as to use of blood of different classification*

Any person about to receive a blood transfusion, or a parent of said person, or the next of kin of said person shall be informed of the race of the donor of the blood proposed to be used if it is proposed to use blood from a person of a different racial classification. Acts 1958, No. 519, §2.

§1296.3 *Emergencies; certification by doctor*

In the event that there are, in the opinion of the doctor, emergency circumstances existing, a transfusion may be given without regard to the provisions of this Part, provided the doctor shall certify to the fact that there was such an emergency. Acts 1958, No. 519, §3.

§1296.4 *Emergency and disaster areas*

The provisions of this Part shall not apply to emergency and disaster areas if such an emergency has been declared by the governor, a municipal governing authority or a federal agency having the authority to declare such an emergency. Acts 1958, No. 519, §4.

§1296.5 *Penalties*

Any person who shall violate any of the provisions of this Part shall be guilty of a misdemeanor and shall pay a fine of not more than one hundred dollars or shall be im-

prisoned for not more than thirty days, or both. Acts 1958, No. 519, §5.

APPENDIX E

Additional Information Obtained by Petitioner by telephone on the 9th of October, 1972 which serves further to confuse the matter or proves that hospitals in Louisiana are violating the State law with no directive from the Federal Government forcing them to do so.

Telephone conversation between Petitioner and Nancy Brown, a worker in the Director's Office at Charity Hospital, New Orleans, Louisiana:

MISS BROWN:

> Blood is not coded by race at the Charity Hospital. We work under the direction of the American Association of Blood Banks.

MRS. GAILLOT:

> Did you all at Charity Hospital receive a written directive or regulation from the US Department of Health, Education and Welfare forbidding the labeling of blood by race?

MISS BROWN:

> No. I am telling you it came from the A.A.B.B., which is the American Association of Blood Banks, and the A.A.B.B. didn't cite any law. This is in compliance to keep the hospital accreditation with the American Hospital Association. They have nothing from HEW.

The petitioner then called the A.A.B.B. in Washington, D.C. and spoke to Lois James in the Association who made

the following statement over the telephone to petitioner on the 9th of October, 1972.

"The A.A.B.B. is an association of blood banks and is not controlled by government; it's an independent organization. The organization has membership dues. It is not a branch of Federal Government; it's the same as American Medical Association — they work with HEW and they received a grant from the National Health Institute, which grant came direct from HEW."

In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-607

MRS. B. J. GAILLOT, JR., PETITIONER

v.

UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioner brought this declaratory judgment action to challenge the policy of the Department of Health, Education and Welfare of denying federal assistance to state hospitals which classify blood according to the race of the donor.[1] She contends that the policy results in the denial of her First Amendment rights because her religious convictions preclude transfusion of blood from a person of another race.[2] The district court dis-

[1] The policy is based upon Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.*, and the regulations promulgated under it, 45 C.F.R. 80.1, *et seq.*

[2] She also urges for the first time in this Court that the policy conflicts with state statutes.

missed the complaint, finding that petitioner had not shown subject matter jurisdiction and had not stated a claim upon which relief could be granted.[1] The Court of Appeals for the Fifth Circuit affirmed *per curiam* (Pet. App. A).

The opinions below, upon which we rely, show that the district court properly dismissed this suit.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

NOVEMBER 1972.

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[1] Petitioner did not include the order of the district court in her appendix. We have included it here for the convenience of the Court.

APPENDIX

Minute Entry
June 4, 1971
Christenberry, J.

Mrs. B. J. Gaillot, Jr.	Section "A"
vs.	No. 70-1586
United States Department of Health, Education & Welfare	Civil Action

Mrs. B. J. Gaillot, Jr. has filed in proper person a "Petition for a 'Declaratory Judgment' Relevant to the 'Labeling of Blood by Race.'" Petitioner attacks certain directives of the United States Department of Health, Education & Welfare prohibiting the racial labeling of blood by state hospitals receiving federal aid. Defendant, United States Department of Health, Education & Welfare moved this court to dismiss the complaint on the grounds that it failed to state adequate grounds for the jurisdiction of the court as required by Rule 8 of the F.R.C.P., that it failed to state a claim upon which relief can be granted, and that the United States Department of Health, Education & Welfare is not a suable entity.

At the initial hearing in the matter, the motion was denied with plaintiff being given 30 days in which to amend her complaint. Plaintiff amended her complaint and the defendant's motion to dismiss was renewed.

Now, after having considered the pleadings, the arguments and memoranda of counsel, the court finds that defendant's motion to dismiss is meritorious and should be granted.

In her amended complaint petitioner has again failed to demonstrate the basis for this court's jurisdiction. This alone renders her complaint fatally defective. Ivey v. Frost, 346 F.2d 115 (8th Cir. 1965). Styling the complaint as one for declaratory judgment does not relieve plaintiff of her duty to state an independent source of jurisdiction. U.S. v. Smith, 393 F.2d 318 (5th CCA 1968).

Aside from this however, is plaintiff's failure to show how she is directly injured by the enforcement of the Department of Health, Education & Welfare's directive. Ashwander v. Tennessee Valley Authority, 297 U. S. 288, 341 (1936) (Brandeis, J., concurring). She has not shown that she has sustained or in the future will sustain any direct personal injury. Her allegations do no more than allege in vague and indefinite terms that she may suffer an injury which, if it exists at all, will be shared by all people in common. Clearly, there is no justiciable case or controversy, and there being none, plaintiff has failed to state a claim upon which relief can be granted. Accordingly,

IT IS ORDERED that the motion of defendant, United States Department of Health, Education and Welfare, to dismiss be and it is hereby GRANTED.

MRS. B. J. GAILLOT, JR.
CLAUDE J. AUCOIN, JR., ESQ.

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